



**FILED**

Jun 12 2008, 8:50 am

*Kevin L. Smith*

**CLERK**

of the supreme court,  
court of appeals and  
tax court

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

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No. 22A01-0712-CR-565

**June 12, 2008**

**BAKER, Chief Judge**

Appellant-defendant Gary Gallien appeals the twenty-eight-year sentence imposed by

the trial court after he was convicted of two counts of Burglary,<sup>1</sup> a class C felony, Receiving Stolen Property,<sup>2</sup> a class D felony, and found to be a habitual offender. Specifically, Gallien argues that his sentence is inappropriate in light of the nature of the offenses and his character. Although we do not find Gallien's sentence to be inappropriate, the trial court erred by not ordering that sentence to run consecutively to any remaining sentence in the case for which Gallien was on probation at the time he committed the underlying offenses. Thus, we affirm in part and remand with instructions.

### FACTS

Early in the morning on April 15, 2007, Gallien and two cohorts drove a stolen vehicle to a Goodwill store in Floyds Knobs, broke into the store, and stole money and a moving dolly. The trio then drove to a tavern in Galena, broke in, and stole an automated teller machine, a change machine, and additional money. Gallien fled when Floyd County Police Officer Gene Perrot arrived, but was quickly apprehended.

The State charged Gallien with two counts of class C felony burglary, two counts of class D felony theft, class D felony receiving stolen property, and alleged him to be a habitual offender. A jury found him guilty as charged on August 22, 2007, and found him to be a habitual offender the next day. A sentencing hearing was held on September 26, 2007, and the trial court merged the theft convictions into the burglary convictions and sentenced Gallien to sixteen years imprisonment for the remaining convictions. It enhanced the sentence by twelve years for the habitual offender finding, for an aggregate term of twenty-

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<sup>1</sup> Ind. Code § 35-43-2-1.

eight years imprisonment. Gallien now appeals.

### DISCUSSION AND DECISION

When reviewing a sentence imposed by the trial court, we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). In conducting an appropriateness review, we must examine both the nature of the offense and the defendant’s character. Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004). We may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied.

As for the nature of the offenses, Gallien burglarized a tavern and a Goodwill store, wantonly inflicting damage to each of the businesses. Specifically, Gallien inflicted \$8,500 of damage to the Goodwill store—a not-for-profit business. At the tavern, Gallien backed a stolen vehicle through a rear window, pounded several holes into a wall with a sledgehammer, and ripped an ATM from the wall, causing \$4,807 of damage. Turning to Gallien’s character, the twenty-eight-year-old has a lengthy criminal history consisting of seven prior felony burglary, theft, and receiving stolen property convictions. In fact, he was on probation at the time he committed the present offenses. Tr. p. 572, 600, 610. Under these circumstances, we find that the sentence imposed by the trial court is not inappropriate in light of the nature of the offenses and Gallien’s character.

As the State notes, because Gallien was on probation at the time he committed the

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<sup>2</sup> I.C. § 35-43-4-2(b).

present offenses, the trial court should have ordered his sentence to run consecutively to any sentence remaining in the case for which he was on probation. See Ind. Code § 35-50-1-2(d) (providing, in part, that if a person commits a crime while on probation for another crime, “the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed”). Because the trial court did not explicitly order the sentence in this case to run consecutively to any sentence remaining in the case for which Gallien was on probation at the time he committed the underlying offenses, we remand to the trial court with instructions that it amend the sentencing order.

The judgment of the trial court is affirmed in part and remanded with instructions.

KIRSCH, J., and BAILEY, J., concur.